



**APPENDIX**

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**Supreme Court of the United States**

OCTOBER TERM, 1975

**No. 75-871**

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JOHN R. MANSON, COMMISSIONER OF CORRECTION  
OF THE STATE OF CONNECTICUT,

*Petitioner,*

v.

NOWELL A. BRATHWAITE,

*Respondent.*

\_\_\_\_\_  
ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR CERTIORARI FILED DECEMBER 20, 1975  
CERTIORARI GRANTED MAY 3, 1976

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# 1. RELEVANT DOCKET ENTRIES

(a) United States District Court for the District of Connecticut:

- (1) June 28, 1974. Petition for writ of habeas corpus.
- (2) July 2, 1974. Order to show cause why a writ of habeas corpus should not be issued.
- (3) July 15, 1975. Order appointing Martha Stone, Esquire, as attorney for petitioner.
- (4) July 15, 1974. Return of respondent.
- (5) May 13, 1975. Memorandum of decision.
- (6) May 21, 1975. Judgment.
- (7) May 22, 1975. Notice of appeal.

(b) United States Court of Appeals for the Second Circuit:

- (1) July 30, 1975. Order appointing Martha Stone, Esquire, as counsel on appeal.
- (2) November 20, 1975. Opinion and judgment.
- (3) December 5, 1975. Motion to stay issuance of mandate pending petition for writ of certiorari.
- (4) December 19, 1975. Order staying issuance of mandate.

# 2. RELEVANT PLEADINGS, OPINIONS, AND JUDGMENTS

(a) Pleadings (United States District Court for the District of Connecticut):

- (1) Petition for writ of habeas corpus (filed June 28, 1974):

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CIVIL No. H 74-209

NOWELL A. BRATHWAITE,

*Petitioner,*

v.

JOHN MANSON, Commissioner of Corrections of the  
State of Connecticut,

*Respondent.*

**PETITION FOR WRIT OF HABEAS CORPUS**

Now comes the Petitioner Nowell A. Brathwaite and petitions this Court for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, upon the following facts:

1. Petitioner is currently incarcerated at the Connecticut Correctional Institution at Somers, Connecticut, where he is serving a sentence of six to ten years pursuant to convictions on January 14, 1971 for sale of a narcotic drug and possession of a narcotic drug, after jury trial in Connecticut Superior Court at Hartford.

2. Respondent is the Commissioner of Corrections of the State of Connecticut, in whose custody petitioner is presently confined.

3. Petitioner's trial was conducted in violation of his rights under the Fifth and Fourteenth Amendments of the United States Constitution, in the following respects:

A. Testimony regarding an out-of-court photographic identification of the petitioner was improperly admitted into evidence at trial.

i. At petitioner's trial, police undercover agent Jimmy Glover testified that on May 5, 1970, he and police informant Henry Brown conducted a narcotics transaction with an unknown male subject. Glover further testified that at the time of the alleged transaction neither he nor Brown knew the identity of the third party involved.

ii. Hartford Police Department Detective Michael D'Onofrio testified at trial that based upon a physical description of this unknown party supplied by Glover, he (D'Onofrio) selected a police Records Division photograph of petitioner for possible identification by Glover. D'Onofrio further testified that petitioner was not personally known to him at this time.

iii. On May 7, 1970, Glover was shown this single photograph of petitioner and identified the subject therein as the person from whom he had purchased narcotics two days earlier.

iv. Glover neither identified petitioner Brathwaite in a line-up, nor viewed any array of photographs, although, as D'Onofrio testified at trial, Brathwaite was, in fact, available for a line-up and a photographic array could have been arranged.

v. Glover was permitted to testify at trial as to his photographic identification of petitioner on May 7, 1970.

vi. Henry Brown, who was present at the alleged sale, testified at trial that petitioner was not the person with whom the sale had been transacted. Brown further testified that a woman had made the sale to Glover.

vii. Glover's photographic identification of petitioner, which formed the sole basis for petitioner's conviction, resulted from impermissible and unnecessarily suggestive identification procedures produced a substantial likelihood of misidentification, in violation of petitioner's rights under the Fifth and Fourteenth Amendments of the United States Constitution.

B. Testimony regarding an in-court identification of petitioner was improperly admitted into evidence at trial.

i. Petitioner's trial was held approximately eight months after the alleged narcotics transaction. Glover testified that during this eight month period he had not seen petitioner.

ii. At trial, Glover made an in-court identification of petitioner as the third party involved in the narcotics transaction.

iii. Glover's in-court identification of petitioner was irreparably tainted by the prior unlawful photographic identification, in violation of petitioner's rights under the Fifth and Fourteenth Amendments of the United States Constitution.

4. Petitioner's convictions were appealed to the Connecticut Supreme Court on the grounds stated herein. Petitioner's convictions were affirmed on May 1, 1973.

Because of the foregoing facts, petitioner is being restrained of his liberty by the respondents in violation of the Constitution of the United States, and he therefore prays that this petition for a writ of habeas corpus be granted and an order be entered discharging him from custody.

*Respectfully submitted,*

NOWELL A. BRATHWAITE  
PETITIONER  
PRO SE

(2) Return of respondent (filed July 15, 1974):

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CIVIL No. 74-209

NOWELL A. BRATHWAITE,

v.

JOHN MANSON, Commissioner of Correction of the  
State of Connecticut,

**RETURN OF RESPONDENT**

1. The Respondent, John Manson, is the Commissioner of Correction of the State of Connecticut.

2. On February 5, 1971, after a trial by jury, the petitioner was sentenced to be imprisoned in the Connecticut Correctional Institution (formerly the Connecticut State Prison) as follows:

Count 1. Violation of an Act Relating to Dependency-Producing Drugs (Sale of narcotics)

Count 2. Violation of an Act Relating to Dependency-Producing Drugs (Possession of narcotics)

On the first count for a term of not less than six nor more than nine years, on the second count for a term of one year, for an effective sentence of not less than six nor more than ten years.

3. Thereafter, on February 5, 1971, the petitioner was duly delivered to the Warden of the Connecticut Correctional Institution on a mittimus issued by the Superior Court for Hartford County pursuant to said sentence.



4. The respondent holds the petitioner by virtue of the foregoing proceedings.

### BY WAY OF ANSWER

5. Paragraph 1 is admitted.

6. Paragraph 2 is admitted.

7. Paragraph 3 is denied.

8. Paragraph 4 is admitted.

### BY WAY OF AFFIRMATIVE DEFENSE

9. The State of Connecticut post-conviction procedures afford an adequate remedy for the petitioner, and these remedies are available to him.

10. The Courts of the State of Connecticut have not had an opportunity to pass on the claims alleged in the petitioner's application.

11. Although exhaustion of state remedies is not a jurisdictional requirement, it is a doctrine based on comity and codified by statute, and the petitioner has failed to exhaust state remedies or to follow the procedures established by the State of Connecticut available to him.

JOHN MANSON, Commissioner of Correction  
of the State of Connecticut, Respondent

By .....

JOHN D. LABELLE  
State's Attorney  
for Hartford County

### (b) Opinions:

- (1) The opinion of the Connecticut Supreme Court (*State v. Brathwaite*, 164 Conn. 617, 325 A.2d 284) is printed in the Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, pp. 1a to 4a.
- (2) The Memorandum of Decision of the United States District Court for the District of Connecticut (*Nowell A. Brathwaite v. John Manson, Commissioner of Correction of the State of Connecticut*, Civil No. H 74-209) is printed in the aforesaid Appendix, pp. 5a to 11a.
- (3) The opinion of the United States Court of Appeals for the Second Circuit (*Brathwaite v. Manson*, 527 F.2d 363 [1975]) is printed in the aforesaid Appendix, pp. 12a to 27a.

### (c) Judgments:

- (1) Judgment of United States District Court for the District of Connecticut:

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Civil No. H 74-209

NOWELL A. BRATHWAITE,

v.

JOHN MANSON, Commissioner of Corrections of the  
State of Connecticut,

**JUDGMENT**

The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge.

And the Court having filed its Memorandum of Decision, denying the Petitioner's Petition for a Writ of Habeas Corpus and dismissing the action;

It is accordingly ORDERED and ADJUDGED that the Petitioner's Petition be and is hereby dismissed.

Dated at Hartford, Connecticut, this 20th day of May, 1975.

SYLVESTER A. MARKOWSKI  
Clerk, United States District Court

By: William D. Templeton  
Deputy-in-Charge

(2) Judgement of United States Court of Appeals for the  
Second Circuit:

UNITED STATES COURT OF APPEALS  
for the  
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twentieth day of November, one thousand nine hundred and seventy-five.

Present:

HON. IRVING R. KAUFMAN  
*Chief Judge*

HON. HENRY J. FRIENDLY

HON. J. JOSEPH SMITH  
*Circuit Judges,*

75-2093

NOWELL BRATHWAITE,  
*Petitioner-Appellant,*

v.

JOHN MANSON, Commissioner of Corrections of the  
State of Connecticut,  
*Respondent-Appellee.*

**Appeal from the United States District Court for the  
District of Connecticut**

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded to said District Court for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellee.

A. Daniel Fusaro  
*Clerk*

By Vincent A. Carlin  
*Chief Deputy Clerk*

### 3. JUDGMENT IN QUESTION

The judgment in question is the judgment of the United States Court of Appeals for the Second Circuit, dated November 20, 1975, which reversed the judgment of the United States District Court for the District of Connecticut and remanded the action to the District Court for further proceedings.